

**Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES**

**Chapter 11: MEDICAL TREATMENT OF PSYCHOTIC DISORDERS**

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**Chapter 11: MEDICAL TREATMENT OF PSYCHOTIC DISORDERS**

**§11001. MEDICAL TREATMENT OF PSYCHOTIC DISORDERS**

**1. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient. [1993, c. 454, §1 (NEW).]

B. "Declarant" means a person suffering from a psychotic condition who has executed a declaration while in a state of remission in accordance with the requirements of subsection 2. [1993, c. 454, §1 (NEW).]

C. "Declaration" means a written document voluntarily executed by the declarant in accordance with the requirements of subsection 2 regardless of form. [1993, c. 454, §1 (NEW).]

D. "Health care facility" includes any program, institution, place, building or agency or portion thereof, private or public, whether organized for profit or not, used, operated or designed to provide medical diagnosis, treatment or rehabilitative or preventive care to any person. "Health care facility" includes, but is not limited to, facilities that are commonly referred to as hospitals, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations and other facilities providing similarly organized services regardless of nomenclature. [1993, c. 454, §1 (NEW).]

E. "Health care provider" means a person who is licensed, certified or otherwise authorized or permitted by law to administer health care in the ordinary course of business or practice of a profession. [1993, c. 454, §1 (NEW).]

F. "Incompetent person" means a person who suffers from a psychotic condition who is temporarily impaired by reason of having lapsed into that psychotic condition to the extent that while temporarily impaired, the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person's health care. [1993, c. 454, §1 (NEW).]

G. "Physician" means an individual licensed to practice medicine. [1993, c. 454, §1 (NEW).]

H. "Psychotic condition" means any disease, illness or condition commonly referred to by the medical profession according to ordinary standards of current medical practice as any disorder characterized by psychotic tendencies or manic-depressive behavior or schizophrenia or other similar condition that, without the administration of appropriate medical treatment, including the use of psychotropic drugs, would constitute a danger to the patient or to others and would result in a patient being gravely disabled. [1993, c. 454, §1 (NEW).]

[ 1993, c. 454, §1 (NEW) .]

**2. Execution of declaration.** Any person 18 years of age or older who suffers from a psychotic condition but is competent and in a state of remission at the time of execution may execute a declaration directing that medical treatment, including the administration of psychotropic drugs, be provided at a time when the person has lapsed and is not able to make decisions regarding medical treatment.

[ 1993, c. 454, §1 (NEW) .]

**3. Declaration requirements.** A declaration made pursuant to this chapter must:

- A. Be in writing; [1993, c. 454, §1 (NEW).]
- B. Be signed by the person making the declaration or by another person in the declarant's presence and at the declarant's expressed direction; [1993, c. 454, §1 (NEW).]
- C. Be dated; [1993, c. 454, §1 (NEW).]
- D. Be signed in the presence of 2 or more witnesses who are:
- (1) At least 18 years of age;
  - (2) Not related to the declarant by blood, marriage or adoption;
  - (3) Not, at the time the declaration is executed, attending physicians, employees of the attending physicians or employees of a health care facility in which the declarant is a patient; and [1993, c. 454, §1 (NEW).]
- E. Have all signatures notarized at the same time. [1993, c. 454, §1 (NEW).]
- [ 1993, c. 454, §1 (NEW) .]

**4. Declaration sample form.** The following declaration sample form may be copied and used by filling in the blanks or may be changed to add more individualized instructions or an entirely different format may be used to provide health care instructions.

#### DECLARATION

##### I. Statement of Declarant

Declaration made this ..... day of ..... (month, year). I, ....., being of sound mind, willfully and voluntarily make known my desire that medical treatment as outlined below, including the administration of psychotropic drugs if necessary, be provided to me under the circumstances set forth below, and do hereby declare:

If at any time I should lapse into a psychotic condition as determined by 2 physicians who have personally examined me, one of whom is my attending physician and the physicians have determined that I am unable to make decisions concerning my medical treatment, and that without medical treatment my condition will result in my being gravely disabled and in my posing a serious danger to myself or to others and when medical treatment would serve to remedy the condition and prevent potential or further harm to myself or to others, I direct that the following personal medical treatment plan, including the elements checked below, be provided to me and be carried out:

- (....) Psychotropic drugs (specify) .....
- (....) Hospitalization if necessary
- (....) Counseling
- (....) Therapy involving my family members or friends
- (....) (Other treatment) .....

In the absence of my ability to give directions regarding the provision of medical treatment, it is my intention that this declaration be honored by my family and physician(s) as my legal informed consent to receive medical treatment.

My instructions must prevail even if they create a conflict with the desires of my relatives. This declaration controls in all circumstances.

I understand the full import of this declaration and declare that I am emotionally and mentally competent at this time to make this declaration.

Signed .....  
Address .....

##### II. Statement of Witnesses

I am at least 18 years of age and am not related to the declarant by blood, marriage or adoption or the attending physician, an employee of the attending physician or an employee of the health care facility in which the declarant is a patient.

The declarant is personally known to me and I believe the declarant to be of sound mind at this time of execution.

Witness .....

Address .....

Witness .....

Address.....

### III. Notarization

Subscribed, sworn to and acknowledged before me by ....., the declarant, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of ....., 19....

(SEAL)

Signed .....

.....

(official capacity of officer)

[ 1993, c. 454, §1 (NEW) . ]

**5. Presumed validity of declaration.** If a patient is incompetent at the time of the decision to give medical treatment, a declaration executed in accordance with subsection 2 is presumed valid.

For the purpose of this chapter, a physician or health care facility may presume, in the absence of actual notice to the contrary, that a person who executed a declaration was of sound mind when the declaration was executed.

Execution of a declaration may not be considered an indication of a declarant's mental incompetence.

[ 1993, c. 454, §1 (NEW) . ]

**6. Patient's wishes supersede declaration.** The wishes of a declarant, at all times when the declarant is in a state of remission and is competent, supersede the declaration.

[ 1993, c. 454, §1 (NEW) . ]

**7. Declaration becomes part of medical records.** The declarant must provide for delivery of the notarized declaration to the attending physician. If the declarant is comatose, incompetent or otherwise mentally or physically incapable after executing the declaration, any other person may deliver the notarized declaration to the physician. An attending physician who is notified under this subsection shall promptly make the declaration a part of the declarant's medical records.

[ 1993, c. 454, §1 (NEW) . ]

**8. Duty to deliver.** A person who has a declaration of another in that person's possession and who becomes aware that the declarant is in circumstances under which the terms of the declaration may become applicable shall deliver the declaration to the declarant's attending physician or to the health care facility in which the declarant is a patient.

[ 1993, c. 454, §1 (NEW) . ]

**9. Written certification.** An attending physician who has been notified of the existence of a declaration executed under this chapter shall make all reasonable efforts to obtain the notarized declaration and shall ascertain without delay whether the declarant's current condition corresponds to the condition under which the declaration would take effect.

If a patient's condition corresponds to the condition described in the patient's declaration, a written certification of the declarant's condition must be made a part of the declarant's medical record and must be substantially in the following form:

**CERTIFICATION OF CONDITION SPECIFIED IN PATIENT'S DECLARATION**

I certify that, in my professional opinion, (name of patient) ..... is not able to participate in decisions concerning medical treatment to be administered and has the following condition:

(diagnosis) .....

According to the declaration, (name of patient) ..... wishes to receive medical treatment according to a personal medical treatment plan as specified in the patient's declaration under these circumstances.

Signed .....

Attending Physician

Signed .....

Second Attending Physician

[ 1993, c. 454, §1 (NEW) .]

**10. Identification of declarant.** All inpatient health care facilities shall develop a system to visibly identify a patient's chart that contains a declaration as set forth in this chapter.

[ 1993, c. 454, §1 (NEW) .]

**11. Transfer to another physician.** An attending physician and any other physician under the attending physician's direction or control who possesses the patient's declaration or knows that the declaration is part of the patient's record in the health care facility in which the declarant is receiving care shall follow as closely as possible the terms of the declaration.

An attending physician who, because of personal beliefs or conscience, refuses or is unable to certify a patient or who is unable to comply with the terms of the patient's declaration shall make the necessary arrangements to transfer the patient and the appropriate medical records without delay to another physician. A physician who transfers the patient without unreasonable delay or who makes a good faith attempt to do so is not subject to criminal prosecution or civil liability and may not be found to have committed an act of unprofessional conduct for refusal to comply with the terms of the declaration. Transfer under these circumstances does not constitute abandonment.

Failure of an attending physician to transfer in accordance with this section constitutes professional misconduct.

[ 1993, c. 454, §1 (NEW) .]

**12. Revocation.** At any time the declarant is in a state of remission and is competent, the declaration may be revoked by:

A. Canceling, defacing, obliterating, burning, tearing or otherwise destroying by the declarant or by some person in the declarant's presence and at the declarant's direction; [ 1993, c. 454, §1 (NEW) .]

B. A written revocation signed and dated by the declarant expressing the declarant's intent to revoke. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation; [1993, c. 454, §1 (NEW).]

C. A declarant's unambiguous verbal expression in the presence of 2 adult witnesses of an intent to revoke the declaration. The revocation becomes effective upon communication to the attending physician by the declarant or by both witnesses. The attending physician shall record in the patient's medical record the time, date and place of the revocation and the time, date and place, if different, at which the attending physician received notification of the revocation; or [1993, c. 454, §1 (NEW).]

D. A declarant's unambiguous verbal expression of an intent to revoke the declaration to an attending physician. [1993, c. 454, §1 (NEW).]

[ 1993, c. 454, §1 (NEW) . ]

**13. Health care or health insurance.** A person or entity may not require any person to execute a declaration as a condition for being insured for or for receiving insurance benefits or health care services.

[ 1993, c. 454, §1 (NEW) . ]

**14. Criminal penalties.** A person who threatens, directly or indirectly, coerces or intimidates any person to execute a declaration commits a Class C crime.

A person who willfully conceals, cancels, defaces, obliterates or damages another's declaration without the declarant's consent or who falsifies or forges a declarant's revocation of declaration with the intent to create the false impression that the declarant has directed that no medical treatment be given commits a Class E crime.

A physician who willfully fails to record a statement of revocation according to the requirements of subsection 12 commits a Class C crime.

[ 1993, c. 454, §1 (NEW) . ]

**15. Health personnel protections.** In the absence of actual notice of the revocation of a declaration, a health care provider, health care facility, physician or other person acting under the direction of an attending physician is not subject to criminal prosecution or civil liability and may not be deemed to have engaged in unprofessional conduct as a result of the provision of medical treatment to a declarant in accordance with this chapter unless the absence of actual notice resulted from the negligence of the health care provider, physician or other person.

[ 1993, c. 454, §1 (NEW) . ]

**16. Petition for guardianship.** A person may petition the court for appointment of a guardian for a declarant if that person has good reason to believe that the provision of medical treatment in a particular case:

A. Is contrary to the most recent expressed wishes of a declarant who was in remission and was competent at the time of expressing the wishes; [1993, c. 454, §1 (NEW).]

B. Is being proposed pursuant to a declaration that has been falsified, forged or coerced; or [1993, c. 454, §1 (NEW).]

C. Is being considered without the benefit of a revocation that has been unlawfully concealed, destroyed, altered or cancelled. [1993, c. 454, §1 (NEW).]

[ 1993, c. 454, §1 (NEW) . ]

**17. Procedure in absence of declaration.** In the absence of a declaration, ordinary standards of current medical practice must be followed. Nothing in this chapter may be construed to require a declaration in order for medical treatment to be given. If there is no declaration, a verbal statement made by the patient to either

a physician or to the patient's friend or relative may be considered by the physician in deciding whether the patient would want the physician to provide medical treatment. Unambiguous verbal statements by the patient or reliable reports of these statements must be documented in the patient's medical record.

The provision of medical treatment pursuant to this subsection is not grounds for any civil or criminal action and does not constitute professional misconduct.

[ 1993, c. 454, §1 (NEW) .]

**18. Preservation of existing rights.** Nothing in this chapter impairs or supersedes any legal right or legal responsibility that a person may have to provide medical treatment in a lawful manner. In this respect, the provisions of this chapter are cumulative.

[ 1993, c. 454, §1 (NEW) .]

**19. No presumption.** This chapter does not create a presumption concerning the intention of a person who has revoked or has not executed a declaration to receive medical treatment.

[ 1993, c. 454, §1 (NEW) .]

**20. Declaration executed before effective date.** The declaration of any patient executed prior to the effective date of this chapter must be given effect as provided in this chapter.

[ 1993, c. 454, §1 (NEW) .]

**21. Recognition of document executed in another state.** A document executed in another state is valid for purposes of this chapter if the document and the execution of the document substantially comply with the requirements of this chapter.

[ 1993, c. 454, §1 (NEW) .]

**22. Effect of multiple documents.** Medical treatment instructions contained in a declaration executed in accordance with this chapter supersede:

A. A contrary or conflicting instruction given by a proxy or an attorney for health care decisions unless the proxy appointment or the power of attorney expressly provides otherwise; and [1993, c. 454, §1 (NEW) .]

B. Instructions in a prior declaration. [1993, c. 454, §1 (NEW) .]

[ 1993, c. 454, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 454, §1 (NEW) .

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